



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

Jul 26 2007

CERTIFIED MAIL, RETURN RECEIPT REQUESTED (7004116000303578520)

James P. Magee, Esq.
Baldwin Haspel Burke & Mayer
1100 Poydras Street
Suite 2200 Energy Centre
New Orleans LA 70163-2200

Re: EPA Docket Number: CWA-06-2007-2718

Dear Mr. Magee:

Enclosed is an administrative complaint issued by EPA alleging that MandyMax GP, L.L.C., d/b/a MandyMax Development (MandyMax), has unlawfully discharged pollutants into waters of the United States in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Complaint proposes that a civil penalty of \$75,000.00 be assessed for the violations. Also enclosed is a copy of 40 C.F.R. Part 22, which sets forth the rules of procedure applicable to the case.

I understand based on your previous communications with EPA attorney Michael Boydston that you represent MandyMax in this matter and have agreed to accept service on behalf of MandyMax.

MandyMax has the right to a hearing to contest the factual allegations in the Complaint. If MandyMax admits the allegations or is found to be liable for the violations after a hearing, MandyMax has the right to submit evidence relevant to the amount of the penalty to be assessed. If MandyMax wishes to contest the allegations in the Complaint, it must file an answer within thirty days of your receipt of the Complaint. The answer should be sent to the EPA Regional Hearing Clerk at the following address:

Ms. Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

If MandyMax does not file an answer by the applicable deadline, a default order may be issued, in which case the allegations in the Complaint will be deemed admitted by MandyMax, and MandyMax will have waived its right to a hearing on the allegations. A penalty may be assessed and become due and payable without further proceedings thirty days after a default order is issued.

If MandyMax desires to settle this matter without further legal action, it may employ the quick resolution procedure described at 40 C.F.R. § 18.22(a). To avail itself of that procedure, within thirty days after issuance of the complaint MandyMax should file a statement agreeing to pay the full proposed penalty of \$75,000. Then, no sooner than the eleventh day after the close of the thirty-day public comment period on the complaint, MandyMax should pay the penalty by mailing a cashier's check or certified check for \$75,000.00, payable to "Treasurer of the United States," to:

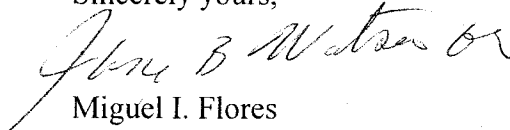
Regional Hearing Clerk
U. S. EPA Region 6
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

(Note that this Pittsburgh address for payments to the Regional Hearing Clerk is different from the Dallas address for the Regional Hearing Clerk for Region 6 shown previously.) "In the Matter of MandyMax GP, L.L.C., d/b/a MandyMax Development, No. CWA-06-2007-2718," should be clearly marked on the check to ensure proper credit for payment. At the same time MandyMax should also send a separate notice of payment, including a copy of the check, to each of the following persons: the Regional Hearing Clerk for Region 6 (6RC-D); the enforcement officer, Donna Mullins (6WQ-EM); and the EPA attorney, Michael Boydston (6RC-M); at 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Following these procedures will ensure proper credit when payment is received. The case will then be concluded by the issuance of a Final Order by EPA.

An alternative to the quick resolution process would be to negotiate a Consent Agreement and Final Order, in accordance with 40 C.F.R. § 18.22(b)(2). EPA cannot execute and file any Consent Agreement and Final Order until it considers public comments, if any, submitted on the Complaint.

If you have any questions, please contact Donna Mullins at (214) 665-7576.

Sincerely yours,



Miguel I. Flores

Director

Water Quality Protection Division

Enclosures

cc (with copy of complaint):

Regional Hearing Clerk

Rick Meyer, Meyer Engineers, LTD.

Rob Heffner, New Orleans District, Corps of Engineers

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

07 JUL 2007 2 15
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:	§	Docket No. CWA-06-2007-2718
	§	
	§	Proceeding to Assess a
MandyMax GP, L.L.C., a Texas	§	Civil Penalty Under § 309(g)
limited liability company,	§	of the Clean Water Act
d/b/a MandyMax Development,	§	
	§	
Respondent.	§	Administrative Complaint

I. STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Water Quality Protection Division. This Complaint is issued in accordance with the Consolidated Rules of Practice, published at 40 C.F.R. Part 22.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. MandyMax GP, L.L.C. is and at all times relevant to the violations alleged herein was a Texas Limited Liability Company and a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5). At all times relevant to the violations alleged herein, MandyMax GP did business in the state of Louisiana under the name "MandyMax Development."

3. At all times relevant to the violations alleged herein, Section 301(a) of the Act, 33 U.S.C. § 1311(a), provided that it was unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of and in compliance with a permit issued under the Act.

4. At all times relevant to the violations alleged herein, Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), provided that whenever on the basis of any available information the Administrator found that a person had violated Section 301 of the Act, 33 U.S.C. § 1311, the Administrator was authorized to assess a class I or class II civil penalty under Section 301(g) of the Act.

5. At all times relevant to the violations alleged herein, Section 404 of the Act, 33 U.S.C. § 1344, authorized the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into waters of the United States.

6. On or about April 19, 2006, Respondent, and/or other persons and/or a business entity or entities acting at Respondent's direction and on its behalf, discharged pollutants from one or more point sources into waters of the United States without a permit issued under the Act, in violation of Sections 301(a) and 309(g)(1)(A) of the Act, 33 U.S.C. §§ 1311(a) and 1319(g)(1)(A). More particularly, Respondent and/or said other parties discharged "dredged material" and "fill material," as defined by 40 C.F.R. § 232.2, by means of equipment (e.g., earth-moving equipment) into Rattlesnake Branch and wetlands in a 5.6 acre tract of land at Section 31 and 32, Township 6 South, and Range 11 East. This site is associated with Rattlesnake Branch and the Tchefuncte River in St. Tammany Parish, Louisiana. Rattlesnake Branch is a relatively permanent stream; it is a perennially flowing tributary of the Tchefuncte River, which is a navigable-in-fact water. Affected wetlands at the site are adjacent to Rattlesnake Branch and/or the Tchefuncte River. A significant nexus exists between such wetlands and the Tchefuncte River. This site is being developed for Giverney Gardens Subdivision.

7. The discharged dredged material and fill material were "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

8. Each piece of equipment used to carry out the discharges was a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

9. The wetlands and other waters identified in paragraph 6 above were "waters of the United States" as defined by 40 C.F.R. § 232.2.

10. At no time during the period alleged in paragraph 6 did Respondent have a permit issued by the U.S. Army Corps of Engineers that authorized the discharges alleged in that paragraph.

11. EPA has notified the Louisiana Department of Environmental Quality of the issuance of this Complaint and has afforded the state an opportunity to consult with EPA regarding the assessment of a civil penalty against Respondent.

12. As required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA is notifying the public of the filing of this Complaint and is affording the public thirty days in which to comment on the Complaint and the proposed penalty. At the expiration of the notice period, EPA will consider any comments filed by the public.

13. Based on these Findings of Fact and Conclusions of Law, EPA finds that Respondent has committed the violations alleged herein and is liable for a civil penalty.

III. PROPOSED PENALTY

14. Based on the foregoing Findings of Fact and Conclusions of Law and in accordance with Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1), (g)(2)(A), EPA Region 6 proposes to assess a class II civil penalty of \$75,000.00, as an appropriate resolution of the violations described above in paragraph 6.

15. In determining the amount of the penalty EPA has considered the factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3); the nature, circumstances, extent and gravity of the violations; Respondent's ability to pay a penalty; any history of such violations; the degree of culpability, economic benefit or savings, if any, resulting from the violations; and such other factors as justice may require.

IV. FAILURE TO FILE AN ANSWER

16. If Respondent wishes to admit, deny or explain any material allegation set forth in the above findings of fact or contest the amount of the penalty proposed, Respondent must file an answer to this Complaint within thirty days after Respondent's receipt of the Complaint, regardless of whether Respondent requests a hearing on the allegations of the Complaint.

17. The requirements for an answer are set forth at 40 C.F.R. § 22.15. Respondent's failure in an answer to admit, deny or explain any material factual allegation in the Complaint will constitute an admission of the allegation under 40 C.F.R. § 22.15(d).

18. If Respondent fails to file an answer within thirty days of service of the Complaint, Respondent may be found in default and a default order may be issued under 40 C.F.R. § 22.17. Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such allegations.

19. Respondent must send its answer, including any request for a hearing, and all other pleadings and papers required to be filed with the Regional Hearing Clerk to:

Lorena Vaughn (6RC-D)
Regional Hearing Clerk
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

20. The answer must be signed by Respondent's corporate representative or its attorney or

other representative, if any, and include the information required by 40 C.F.R. §§ 22.5 and 22.15.

All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

21. Respondent may request a hearing to contest any material allegation set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty, in accordance with Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A). The hearing procedures are set forth at 40 C.F.R. §§ 22.21-22.26.

22. If a hearing is requested, persons who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at the hearing in accordance with Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

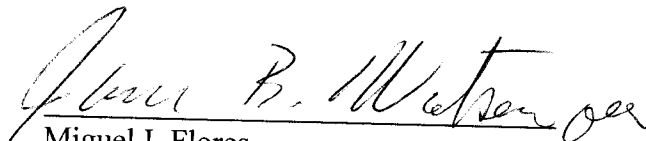
VI. SETTLEMENT

23. If this action is settled without a hearing, it will be concluded by a quick resolution, in accordance with 40 C.F.R. § 22.18(a), or by a Consent Agreement and Final Order, in accordance with 40 C.F.R. § 22.18(b). In a quick resolution, Respondent would file a statement agreeing to pay the full penalty, in accordance with 40 C.F.R. § 22.18(a)(2), but as required by § 22.18(a)(1), Respondent would not make actual payment until the eleventh day after the close of the public comment period. A Final Order would then be issued terminating the case. In a Consent Agreement and Final Order Respondent would waive its right to a hearing on any matter stipulated to in the agreement or alleged in the Complaint. Any person who commented on this Complaint would be notified of the settlement and proposed final order and would be given thirty days to petition EPA to set aside the Consent Agreement and Final Order and hold a hearing on the allegations of the Complaint.

24. Neither the assessment nor the payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, applicable regulations and permits and any compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including an order relating to the violations alleged herein.

JUL 26 2007

Issuance date



Miguel I. Flores

Director

Water Quality Protection Division

CERTIFICATE OF SERVICE

I certify that on JUL 26 2007 a true and correct copy of this Complaint was sent by certified mail, return receipt requested, to:

James P. Magee, Esq. (Counsel for, and agreed recipient of service on behalf of,
MandyMax GP, L.L.C.)
Baldwin, Haspel Burke & Mayer
1100 Poydras Street
Suite 2200 Energy Centre
New Orleans LA 70163-2200

Donna Mullins